

Environmental Protection Agency

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(h) *Administrative procedures.* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority.

(1) States shall furnish adequate documentation of existing legal authority and demonstrated administrative capacity to implement and enforce the provisions of the EIP.

(2) For programs which require private and/or public entities to establish emission-related economic incentives (e.g., programs requiring employers to exempt carpoolers/multiple occupancy vehicles from paying for parking), States shall furnish adequate documentation of State authority and administrative capacity to implement and enforce the underlying program.

(i) *Enforcement mechanisms.* The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and State and federally enforceable. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified.

(1) Emission limit violations. (i) Programs imposing limits on mass emissions or emission rates that provide for extended averaging times and/or compliance on a multisource basis shall include procedures for determining the number of violations, the number of days of violation, and sources in violation, for statutory maximum penalty purposes, when the limits are exceeded. The State shall demonstrate that such procedures shall not lessen the incentive for source compliance as compared to a program applied on a source-by-source, daily basis.

(ii) Programs shall require plans for remedying noncompliance at any facility that exceeds a multisource emissions limit for a given averaging pe-

riod. These plans shall be enforceable both federally and by the State.

(2) Violations of MRR requirements. The MRR requirements shall apply on a daily basis, as appropriate, and violations thereof shall be subject to State enforcement sanctions and to the Federal penalty of up to \$25,000 for each day a violation occurs or continues. In addition, where the requisite scienter conditions are met, violations of such requirements shall be subject to the Act's criminal penalty sanctions of section 113(c)(2), which provides for fines and imprisonment of up to 2 years.

§ 51.494 Use of program revenues.

Any revenues generated from statutory EIP's shall be used by the State for any of the following:

(a) Providing incentives for achieving emissions reductions.

(b) Providing assistance for the development of innovative technologies for the control of O₃ air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(c) Funding the administrative costs of State programs under this Act. Not more than 50 percent of such revenues may be used for this purpose. The use of any revenues generated from discretionary EIP's shall not be constrained by the provisions of this part.

Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

SOURCE: 58 FR 63247, Nov. 30, 1993, unless otherwise noted.

§ 51.850 [Reserved]

§ 51.851 State implementation plan (SIP) or Tribal implementation plan (TIP) revision.

(a) A State or eligible Tribe (a federally recognized tribal government determined to be eligible to submit a TIP under 40 CFR 49.6) may submit to the Environmental Protection Agency

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(EPA) a revision to its applicable implementation plan which contains criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan, consistent with this section and 40 CFR part 93, subpart B.

(b) Until EPA approves the conformity implementation plan revision permitted by this section, Federal agencies shall use the provisions of 40 CFR part 93, subpart B in addition to any existing applicable State or tribal requirements, to demonstrate conformity with the applicable SIP or TIP as required by section 176(c) of the CAA (42 U.S.C. 7506).

(c) Following EPA approval of the State or tribal conformity provisions (or a portion thereof) in a revision to the applicable SIP or TIP, conformity determinations shall be governed by the approved (or approved portion of) State or tribal criteria and procedures. The Federal conformity regulations contained in 40 CFR part 93, subpart B would apply only for the portion, if any, of the part 93 requirements not contained in the State or Tribe conformity provisions approved by EPA.

(d) The State or tribal conformity implementation plan criteria and procedures cannot be any less stringent than the requirements in 40 CFR part 93, subpart B.

(e) A State's or Tribe's conformity provisions may contain criteria and procedures more stringent than the requirements described in this subpart and part 93, subpart B, only if the State's or Tribe's conformity provisions apply equally to non-Federal as well as Federal entities.

(f) In its SIP or TIP, the State or Tribe may identify a list of Federal actions or type of emissions that it presumes will conform. The State or Tribe may place whatever limitations on that list that it deems necessary. The State or Tribe must demonstrate that the action will not interfere with timely attainment or maintenance of the standard, meeting the reasonable further progress milestones or other requirements of the Clean Air Act. Federal agencies can rely on the list to determine that their emissions conform with the applicable SIP or TIP.

(g) Any previously applicable SIP or TIP requirements relating to conformity remain enforceable until EPA approves the revision to the SIP or TIP to specifically remove them.

[75 FR 17272, Apr. 5, 2010]

§§ 51.852–51.860 [Reserved]

Subpart X—Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard

SOURCE: 69 FR 23996, Apr. 30, 2004, unless otherwise noted.

§ 51.900 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) *1-hour NAAQS* means the 1-hour ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) *8-hour NAAQS* means the 8-hour ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) *1-hour ozone design value* is the 1-hour ozone concentration calculated according to 40 CFR part 50, Appendix H and the interpretation methodology issued by the Administrator most recently before the date of the enactment of the CAA Amendments of 1990.

(d) *8-Hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, appendix I.

(e) *CAA* means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2003).

(f) *Applicable requirements* means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at designation for the 8-hour NAAQS:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (IM).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.